

State of California

Department of Education

LAST MINUTE MEMORANDUM

DATE: September 8, 2004

TO: MEMBERS, STATE BOARD OF EDUCATION

FROM: Geno Flores, Deputy Superintendent
Assessment and Accountability Branch

RE: Item No. 17

SUBJECT: *No Child Left Behind (NCLB) Act of 2001: Approve Commencement of the Rulemaking Process for the Proposed Regulations for Supplemental Educational Services Title 1 Section 1116(e) (20 United States Code Section 6316(e))*

The attached revised regulations contain the following substantive changes (the referenced page and line numbers are those found on the regulations in the Agenda Packet):

1. Page 2 of 6, lines 32 and 33, and Page 3 of 6, lines 1 and 2 replaced with:

(1) Improved student academic performance in individual student scores on national, state, district or other assessment in English language arts or mathematics. These assessments must be developed in accordance with the standards for validity and reliability as outlined in the Standards for Educational and Psychological Testing;

This change also necessitates striking "at least two of" from line 31 on page 2 of 6.

2. Page 3 of 6, lines 9 through 12 replaced with:

(a) Eligible applicants must submit a completed application to CDE before March 1 of the school year preceding the fiscal year in which they wish to become a provider.
(b) Applications will be reviewed by CDE and submitted to SBE for approval. The effective date of any ensuing approval will be July 1 of that same year.

3. Page 3 of 6, lines 22 through 24 replaced with:

(4) Provides written proof of current liability insurance coverage and assures they will provide the local education agencies with which they contract written proof of current liability insurance coverage and other necessary insurance of the type and in the amount required by the local education agency;

4. Page 5 of 6, strike "and shall" from line 7 and all of line 8.

5. Page 6 of 6, lines 5 through 8 replaced with:

(3) The provider has failed to contribute to increasing the academic proficiency in English/language arts or mathematics for a majority of students served as demonstrated by student scores on national, state, district, or other assessments in English/language arts or mathematics for grades 2 through 11 and by teacher recommendations for grades K-1 and grade 12. These assessments must be developed in accordance with the standards for validity and reliability as outlined in the Standards for Educational and Psychological Testing;

Any and all other changes made are technical in nature.

Attachment 1: Fiscal Analysis (6 Pages) (This attachment is not available for web viewing, a printed copy is available for viewing in the State Board of Education)

Attachment 2: Title 5 Proposed Regulations for Supplemental Educational Services (6 pages)

1 Title 5. EDUCATION

2 Division 1. State Department of Education

3 Chapter 12. Compensatory Education

4 Subchapter 13. Supplemental Services

5
6 **§13075. Definition of a “Demonstrated Record of Effectiveness” for Providers of**
7 **Supplemental Services Who Are Approved by the SBE Application of this subchapter.**

8 This subchapter shall apply to supplemental services providers and those seeking to provide
9 supplemental services as specified in Section 1116(e) of the No Child Left Behind (NCLB) Act of
10 2001.

11 (a) ~~For purposes of demonstrating a record of effectiveness for placement on the list of~~
12 ~~approved supplemental services providers, STAR data are required. Until such time as STAR~~
13 ~~data are available, a provider shall be deemed provisional.~~

14 (b) ~~An application, completed per the Supplemental Educational Services Provider Request~~
15 ~~for Application (Rev. 5/2003), which is incorporated by reference, is required of each new~~
16 ~~provider in each of the first two years of service.~~

17 (c) ~~A provisionally approved provider of supplemental educational services has met the~~
18 ~~definition of a demonstrated record of effectiveness when:~~

19 (1) ~~the provider demonstrates the ability to provide effective services by meeting all the~~
20 ~~federal requirements including the following criteria:~~

21 (A) ~~Ensure that programs offered are of high quality, research-based, and specifically~~
22 ~~designed to increase the academic achievement of eligible children on the assessment~~
23 ~~instruments required under ESEA Section 1111 (20 U.S.C. section 6316(e)(1)) and attain~~
24 ~~proficiency in meeting the State's academic achievement standards.~~

25 (B) ~~Ensure that supplemental educational services are coordinated with the student's school~~
26 ~~program.~~

27 (C) ~~Ensure that the instruction and content provided are aligned with state-adopted~~
28 ~~curriculum content standards and instructional materials and aligned with state and local~~
29 ~~assessments.~~

30 (D) ~~Ensure that all instruction and content are secular, neutral, and non-ideological.~~

31 (E) ~~Provide evidence of recent (within the past 2 years) successful experience in improving~~
32 ~~student achievement. (If the student population served by the provider is composed in part of~~
33 ~~English learners, the provider must demonstrate experience in improving the student~~
34 ~~achievement of English learners.)~~

35 (F) ~~Meet all applicable federal, state, and local health, safety, and civil rights laws.~~

~~(G) Have knowledge of the state-adopted content standards, frameworks, and instructional materials.~~

~~(H) Be capable of providing appropriate services to eligible students based on individual needs consistent with the instructional program of the LEA and the state-adopted standards, frameworks, and instructional materials.~~

~~(I) Be financially sound.~~

~~(J) Guarantee that all staff working with students and their parents undergo and pass background checks as required by the local contracting school district.~~

~~(K) Abide by the conditions of the contract with the LEA.~~

~~(2) And, by the end of the second year of provisional approval, ninety-five percent of eligible students receiving services have made increases in academic proficiency at a level articulated in the supplemental educational services contract and as measured by the STAR.~~

NOTE: Authority cited: Sections 12001 and 33031, Education Code. Reference: 20 USC United States Code sSection 6316(e)(4) and Section 12000, Education Code.

§ 13075.1. Definitions.

For purposes of this subchapter, the following definitions apply:

(a) "Eligible applicant" means any public or private (nonprofit or for-profit) entity that meets the State's criteria for approval, and includes public schools (including charter schools), private schools, school districts, or county offices of education that are not currently identified for program improvement or for corrective action pursuant to Section 1116(b)(1) of NCLB institutions of higher education, faith-based and community-based organizations and private businesses;

(b) "Approved supplemental educational services provider" ("provider") means an eligible applicant that has been approved by the State Board of Education (SBE) pursuant to the provisions of this subchapter;

(c) "Eligible student" means a child from a low-income family as determined by the local educational agency for purposes of allocating funds under Section 1113(c)(1) of NCLB who is attending a Title I funded school that is in year two or beyond of program improvement;

(d) "Demonstrated record of effectiveness" means an eligible applicant has documentation of the following:

(1) Improved student academic performance in individual student scores on national, state, district or other assessments in English language arts or mathematics. These assessments must be developed in accordance with the standards for validity and reliability as set forth in *Standards for Educational and Psychological Testing*.

(2) Improved student academic performance as measured by written teacher assessments of student growth in English language arts or mathematics.

NOTE: Authority cited: Sections 12001 and 33031, Education Code. Reference: 20 USC Section 6316(e).

§13075.2. Application, Quality Requirements and Approval.

(a) Eligible applicants must submit a completed application to CDE before March 1 of the school year preceding the fiscal year in which they wish to become a provider;

(b) Applications will be reviewed by CDE and submitted to SBE for approval. The effective date of any ensuing approval will be July 1 of that same calendar year;

(c) An eligible applicant shall be considered for approval upon receipt of a completed application that satisfies each of the following qualifications:

(1) Documents a demonstrated record of effectiveness as defined in Section 13075.1;

(2) Contains at least five letters of reference from previous clients (e.g., families, schools, districts, teachers, etc.) offering testimonial information about the positive impact of the applicant's program.

(3) Certifies that the applicant has not been removed for cause from the list of approved supplemental educational services providers, pursuant to Section 13075.4 of this subchapter, at any time within the two years preceding the fiscal year (July 1-June 30) for which it is submitting an application;

(4) Provides written proof of current liability insurance coverage and assures they will provide the local educational agencies with which they contract written proof of current liability insurance coverage and other necessary insurance of the type and in the amount required by the local educational agency;

(5) Demonstrates that it is legally constituted and qualified to do business in California;

(6) Describes the staffing, fiscal, equipment, and facility resources of the organization that enable it to work with students in compliance with these regulations and applicable federal, state and local statutes and regulations;

(7) Demonstrates it is fiscally sound as shown by the following:

(A) Proof of financial resources to operate as a provider for a minimum of 6 months after initial approval, including a description of how the organization receives funding (e.g., grants, fees-for-services, etc.) separate from reimbursement for provider services;

(B) Proof of financial viability (e.g., through audits, financial statements, or credit rating);

(C) Organizational budgets that identify all sources of revenues available to the applicant and cash flow activity related to the expenditures of that revenue;

(8) Provides certification that the facility meets all applicable federal, state and local health and safety laws, if instruction will occur at a facility other than the student's school or residence;

(9) Demonstrates instruction meets the following criteria:

(A) Instruction will be aligned with applicable state adopted academic content standards and instructional materials;

(B) Instruction will be organized and presented in a manner designed to meet the specific achievement goals of individual students;

(C) Instruction will be coordinated with the student's school program, including an Individual Education Plan (IEP) and/or a 504 Plan, if applicable;

(D) Instruction will be of high quality and will increase student academic achievement in English language arts or mathematics;

(E) Instruction shall be provided outside of the regular school day;

(F) Instruction will be provided that is secular, neutral, and non-ideological;

(10) Describes the procedure for developing specific achievement goals in consultation with parents/guardians and school staff.

(11) Describes the manner in which students with disabilities and English learners will have access to services;

(12) Defines procedures for providing students, parents/guardians, teachers, schools and/or districts with regular reports of student progress;

(13) Describes how the applicant shall secure parental/guardian permission to have access to student data (e.g., STAR data, IEP data and/or 504 data) maintained by the local educational agency (LEA) for each student served for purposes of demonstrating academic improvement;

(14) Provides assurances that all student information shall be kept confidential except as necessary to inform parents/guardians and appropriate school staff;

(15) Describes the process of collaborating with contracting school districts in the use of individual student STAR test results in determining the increase in student academic performance;

(16) Describes procedures to maintain, monitor, and notify LEAs about personnel updates related to provider's staff changes;

(17) Describes procedures for completion of, and compliance with, staff background checks, fingerprinting, and TB tests for those employees providing services to students;

(18) Provides assurance that the provider will comply with all applicable federal, state, and local health, safety, and civil rights laws;

1 (19) Agrees to abide by the conditions set forth in the contract with the LEA, including the
2 payment schedule, rates, and any facility user fee arranged with the LEA that will be in
3 compliance with Section 1116 (e)(6) of the NCLB;

4 (20) Agrees to participate in the monitoring and evaluation process developed and directed
5 by CDE.

6 (d) The term of approval is for a maximum of two fiscal years (July 1- June 30).

7 NOTE: Authority cited: Sections 12001 and 33031, Education Code. Reference: 20 USC
8 Section 6316(e).

9
10 **§13075.3. Submission of An Annual Report by Approved Providers.**

11 (a) Approved providers must maintain records for each year that services are provided to
12 support an annual end-of-fiscal year report to CDE to be submitted by October 1 disclosing the
13 following:

14 (1) Names and numbers of schools served.

15 (2) Total number of students served by grade levels.

16 (3) Data for individual students, with student identifying information redacted, served as
17 follows:

18 (A) Beginning and ending dates of service;

19 (B) Instructional delivery methods;

20 (C) Subject area (i.e. English language arts and mathematics);

21 (D) Beginning and ending performance levels.

22 (4) fiscal and expenditure information.

23 (b) These records must be retained for three years after submission of the annual end-of-
24 fiscal year report.

25 NOTE: Authority cited: Sections 12001 and 33031, Education Code. Reference: 20 USC
26 Section 6316(e).

27
28 **§13075.4. Termination As An Approved Provider.**

29 (a) A provider identified for program improvement or corrective action under Section
30 1116(b)(1) and 1116(c)(3) of NCLB during its term of approval is automatically terminated as an
31 approved provider by operation of law.

32 (b) A provider may be terminated for any of the following reasons:

33 (1) The provider has failed to provide information requested by CDE to allow CDE to monitor
34 and evaluate the program;

1 (2) The provider has failed to monitor and evaluate the progress of students receiving
2 services;

3 (3) The provider has failed to contribute to increasing the academic proficiency in English
4 language arts or mathematics for two consecutive years for a majority of students served, as
5 demonstrated by student scores on national, state, district or other assessments in English
6 language arts or mathematics for grades 2-11 and by teacher recommendations for grades K-1
7 and grade 12. These assessments must be developed in accordance with the standards for
8 validity and reliability as set forth in *Standards for Educational and Psychological Testing*.

9 (4) The provider has failed to meet applicable federal, state and local health, safety, or civil
10 rights laws; or

11 (5) The provider requests voluntary removal from the approved list.

12 NOTE: Authority cited: Sections 12001 and 33031, Education Code. Reference: 20 USC
13 Section 6316(e).

35 9-8-04